Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20555

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment by	)	WC Docket No. 17-84
Removing Barriers to Infrastructure Investment	)	

REPLY COMMENTS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION

These reply comments are filed by the Metropolitan Area Communications Commission (MACC) in response to the above-captioned Notice of Inquiry, released April 21, 2017.

MACC is the franchising authority for fifteen member jurisdictions, representing approximately 140,000 cable subscribers. MACC has negotiated three generally competitive cable television franchises (with Comcast, CenturyLink and Frontier).

In exchange for the right to use and semi-permanently occupy our publicly maintained public rights-of-way, these three cable companies pay cable franchise fees and support our Public, Education and Government Access system. Comcast, the incumbent operator, has agreed in its renewed franchise agreement to continue to provide I-Net services throughout the area – about 80 public safety, educational, health and recreation sites are connected through this partnership which is now over thirty years old.

In this Response, MACC wishes to stress the following points:

There is No Evidence Local Government is Responsible for Deployment Delays

- Our experience shows that local government ordinances and policies do not inhibit broadband deployment. MACC actively encouraged competition through appeals and expressions of interest to telecommunications providers, but it is clear that corporate business models and economics drive deployment. For example, MACC's more urban and densely populated areas enjoy relatively robust competition, whereas the more rural MACC jurisdictions have been overlooked by our franchisees. This is the case, despite the same, or even less stringent, ROW regulations in those areas. Frontier and CenturyLink are providing competitive cable and broadband services in the more densely populated member jurisdictions, but would not commit to build out in the more rural areas despite the exact same local requirements. Comcast has still not extended its cable system to the most rural parts of our franchise area.

- MACC and its member jurisdictions have processes in place that have produced ROW use approvals in very short order. CenturyLink obtained a cable franchise in approximately 12 weeks. Several MACC cities have independently implemented streamlined ROW franchise or license processes that eliminate the need for ROW access negotiations for ROW access by wireline telecom providers.

- The assumption underlying the Commission's NOI is that local government creates delays, when in fact often it is the telecommunications providers. For example, Mobilitie sought franchises with several MACC jurisdictions, but failed to provide accurate descriptions of its facilities and services and submitted an invalid Certificate of Authority from the Oregon Public Utility Commission. Repeated requests for accurate information, and Mobilitie's delay or refusal to provide the information, delayed the negotiations through no fault of the cities. In one MACC jurisdiction, the City and Mobilitie exchanged draft telecommunications franchises pursuant to the City Code for several months before Mobilitie suggested it may not be a telecommunications provider as defined in the Code, despite having applied for a telecommunications franchise.

Retaining Flexibility is Critical to Efficient Deployment

- ***Caps on Fees and Restrictions on Conditions Limit Flexibility to Find Effective Solutions***

    - MACC and its member jurisdictions work hard to encourage the deployment of cable and telecommunications services for our residents and businesses while maintaining a competitively neutral and nondiscriminatory environment. Achieving that balance can be difficult because providers have different technologies, facilities, services, business models and state or federal regulatory requirements that sometimes necessitate creative solutions. Federally-imposed caps and rules constrain both the local governments' and providers' ability to craft solutions that meet the providers' needs yet are competitively neutral and do not discriminate with respect to other providers.

      For example, several MACC jurisdictions have telecommunications franchises that allow for a reduced franchise fee in exchange for free or discounted services to the city—an option proposed by the provider. One-size-fits-all federal rules could prevent these types of solutions.

    - Several MACC jurisdictions have telecommunications companies using the ROW without generating revenue within the city limits. Revenue-based caps do not provide any compensation for this use of the ROW, which in turn raises questions of competitive neutrality when one provider pays for use of the ROW and another does not.

    - Similarly, it does not seem possible to maintain competitive neutrality if jurisdictions are barred from collecting ROW fees from entities such as cable operators that provide additional services over those facilities. MACC jurisdictions have companies using the ROW only for broadband services. How can these jurisdictions collect a ROW fee from these broadband providers, but not from a cable company providing the same services, while complying with a mandate that its fees be competitively neutral and nondiscriminatory?

Federally Imposed Timelines Create Unnecessary Burdens

- As MACC has noted in previous filings, "shot clocks" require local government to devote significant and scarce resources to applicants who may at any time change their minds about their project, often with no compensation to the city for the time and costs related to diligently working on the application (for example, Google Fiber).

- Small cities have limited resources. Our member jurisdiction, Rivergrove, for example, has one part time employee and its Council meets once a month. For cities of this size, shot clocks require staff and the Council to stop work on other important public issues to meet these deadlines, yet nothing requires the companies to diligently negotiate or commit to deployment. The result is that jurisdictions are forced to prioritize these applications over other public business even if the telecom services will benefit few, if any, residents.

In conclusion, in contrast to nearly all previous actions on this topic over the last 25 years, we hope the members of this FCC will factually review the information presented by local government and recognize that local government rarely interferes with the deployment of broadband. However, if the Commission continues its dismissal of local government and moves forward, it must at least put in place benchmarks for broadband deployment under the new rules.

MACC suggests there must be a finding that requires, over a reasonably short timeframe, an actual increase in service providers in urban and (especially) rural areas, more reliable and faster service and a general expectation that retail broadband costs will moderate. If these benchmarks are not met, the proposed rules should expire.

If government regulations truly are the problem, then the FCC should be able to demonstrate that services have improved under these rules. If not, those rules should sunset.

Respectfully Submitted,

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